

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JOHN LEE HIGH,

12 Petitioner,

13 v.

14 SCOTT FRAKES,

15 Respondent.
16
17
18
19
20

Case No. C08-5766RJB-KLS

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
IN FORMA PAUPERIS

Noted for April 3, 2009

21 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
22 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Monroe Correctional Complex, located
23 in Monroe, Washington. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254
24 and an application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner appears to have sufficient
25 funds with which to pay the \$5.00 Court filing fee, the undersigned recommends the Court deny the
26 application.

27 DISCUSSION

28 The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a

1 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the district court has broad discretion
2 in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963),
3 *cert. denied*, 375 U.S. 845 (1963).

4 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when
5 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See* Temple v. Ellerthorpe,
6 586 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.
7 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
8 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

9 By requesting the Court to proceed *in forma pauperis*, petitioner is asking the government to incur
10 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for
11 *habeas corpus*. In his application, petitioner states that he is presently employed, and that he earns \$52.00
12 per month. (Dkt. #6). The prison trust account statement he submitted, also shows that he had average
13 monthly receipts of \$60.14 and an average monthly spendable balance of \$14.68 for the six-month period
14 of July 1 2008, to December 31, 2008. Petitioner, furthermore, indicates that there are no persons who
15 are dependent upon him for support. While the funds to which petitioner has access may not be great,
16 given that a prisoner's basic needs are provided for while incarcerated and that the filing fee required to
17 proceed with this action is minimal (\$5.00), the undersigned finds it is not unreasonable to expect
18 petitioner to pay that fee from those funds.

19 CONCLUSION

20 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the
21 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,
22 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**
23 **thirty (30) days** of the Court's order.

24 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
25 the parties shall have ten (10) days from service of this Report and Recommendation to file written
26 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
27 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
28 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **April 3, 2009**,

1 as noted in the caption.

2 Dated this 10th day of March, 2009.

3
4 

5 Karen L. Strombom
6 United States Magistrate Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28